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BY  
CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
103 DISTRICT COURT  
APPEAL COURT

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FILED

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 Sabena Lakshmi Kammula, individually )  
16 and on behalf of all others similarly )  
17 situated,

18 Plaintiff,

19 vs.

20 KELLOGG COMPANY, a Delaware )  
21 Corporation; KELLOGG USA, INC., a )  
22 Michigan Corporation; KELLOGG )  
23 SALES COMPANY, a Delaware )  
24 Corporation; and DOES 1 through 100, )  
25 inclusive,

26 Defendants.

27 ) Case No. CV09-08102 (MMM) (RZx)  
28 ) Before the Hon. Margaret M. Morrow

29 **FIRST AMENDED CLASS**  
30 **ACTION COMPLAINT**

- 31 1. FALSE AND MISLEADING  
32 ADVERTISING IN VIOLATION  
33 OF BUSINESS AND  
34 PROFESSIONS CODE § 17200, *et seq.*
- 35 2. FALSE AND MISLEADING  
36 ADVERTISING IN VIOLATION  
37 OF BUSINESS AND  
38 PROFESSIONS CODE § 17500, *et seq.*
- 39 3. VIOLATION OF CALIFORNIA  
40 CIVIL CODE § 1750, *et seq.*  
41 (Consumers Legal Remedies Act)

42 **DEMAND FOR JURY TRIAL**

1 Plaintiff Sabena Lakshmi Kammula (“Plaintiff”), individually and on behalf of  
 2 all other similarly situated purchasers of Kellogg Company’s Cocoa Krispies (the  
 3 “Cocoa Krispies Class”) and Rice Krispies (“Rice Krispies Class”) (collectively  
 4 referred to as “the Class”), brings this complaint against Kellogg Company, a  
 5 Delaware corporation, Kellogg USA, Inc., a Michigan corporation, Kellogg Sales  
 6 Company, a Delaware corporation (collectively “Kellogg”) and Does 1 through 100,  
 7 inclusive (collectively referred to herein as “Defendants”) and allege as follows:

8

9 **JURISDICTION**

10 1. This Court has subject matter jurisdiction pursuant to the Class Action  
 11 Fairness Act (“CAFA”), codified in part 28 U.S.C. §§ 1332(d) and 1453.  
 12 Jurisdiction under CAFA is met because: (1) the proposed number of putative class  
 13 members exceeds 100; (2) at least one plaintiff and one defendant are citizens of  
 14 different states, and in some instances, the principal defendant is not a citizen of the  
 15 forum state; and (3) the amount in controversy, including, but not limited to the  
 16 aggregate amount of relief sought by absent class members, exceeds \$5 million. 28  
 17 U.S.C. § 1332(d)(2).

18

19 **VENUE**

20 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2)  
 21 because events giving rise to the claims, including, *inter alia*, Kellogg’s false and  
 22 misleading advertising and marketing, occurred and arose in this District.

23

24 **NATURE OF THE ACTION**

25 3. Defendants made and continue to make false and misleading statements  
 26 in their advertising and packaging of Kellogg’s Cocoa Krispies (hereinafter “Cocoa  
 27 Krispies”) and Kellogg’s Rice Krispies (hereinafter “Rice Krispies”) (collectively  
 28 referred to as “the Products” or “Krispies cereals”). Cocoa Krispies is a

1 “chocolatey, sweetened rice cereal” packaged and marketed by Defendants. Rice  
2 Krispies is “a toasted rice cereal” packaged and marketed by Defendants.

3       4. According to Defendants’ uniform and consistent claims, eating just  
4 three-quarters (¾) cup of Cocoa Krispies will boost a family’s immunity.  
5 Defendants’ uniform and consistent claims also state that eating just one and a  
6 quarter (1 ¼) cups of Rice Krispies will boost a family’s immunity. Specifically,  
7 Defendants market and advertise that both Krispies cereal products “NOW HELP  
8 SUPPORT YOUR CHILD’S IMMUNITY.” Defendants, through a variety of  
9 advertising, including but not limited to print, internet, and the packaging and  
10 labeling of the Krispies cereals, make false regarding the benefits of the Krispies  
11 cereals, including but not limited to the following:

12       a. FRONT LABEL OF PRODUCTS:

13           • “NOW HELPS SUPPORT YOUR CHILD’S IMMUNITY”  
14  
15           • “25% DAILY VALUE OF ANTIOXIDANTS & NUTRIENTS  
16                   VITAMINS A, B, C & E”

17       b. BACK LABEL OF PRODUCTS:

18           • “WITH ANTIOXIDANTS AND NUTRIENTS”  
19  
20           • “Helping to support your family’s IMMUNITY”  
21  
22           • “Kellogg’s Cocoa Krispies has been improved to include antioxidants  
23                   and nutrients that your family needs to help them stay healthy.”  
24  
25           • “Excellent source of vitamins A, B, C, and E – antioxidants and  
26                   nutrients that help support the body’s immune system”  
27  
28           • “Enjoy this wholesome breakfast and help keep your family healthy.”

25       c. INTERNET:

26           • “And now each and every box is fortified with vitamins and nutrients  
27                   that work together to help support your child’s immunity.”

1       5. These consistent and uniform claims are false. Indeed, there is no  
2 known clinical study that adequately supports Defendants' claims. Plaintiff  
3 therefore brings this class action to secure, among other things, injunctive relief,  
4 restitution and actual damages for the Class against Defendants for false and  
5 misleading advertising in violation of CAL. BUS. & PROF. CODE § 17200, *et seq.*  
6 (2009), CAL. BUS. & PROF. CODE § 17500, *et seq.* (2009), and CAL. CIV. CODE §  
7 1750, *et seq.* (2009), among other laws.

8       6. Additionally, Defendants fail to adequately disclose that other  
9 ingredients, including but not limited to sugar and high-fructose corn syrup, effect  
10 their claim that the Krispies cereals "help support" a child's immunity. Defendants  
11 also fail to adequately disclose whether inclusion of such ingredients may outweigh  
12 the benefits, and thus render the "immunity" claims false and/or misleading.

13       7. Defendants further failed and continue to fail to adequately disclose  
14 whether the "antioxidants and nutrients" purportedly added to the box, in  
15 conjunction with such sugary and unhealthy ingredients, negates or otherwise  
16 decreases the so-called health and immunity benefits Defendants claim.

17       8. Defendants also failed and continue to fail to adequately disclose  
18 whether "antioxidants and nutrients" are synthetic and/or unnatural in form, and  
19 whether the form used actually procures the benefits claimed by Defendants.

20       9. Accordingly, Defendants' advertising of the Krispies cereals, including  
21 but not limited to print, packaging and internet advertising, conveys a single,  
22 consistent false and misleading message to consumers: that Defendants' Krispies  
23 cereals will boost a family's immune systems of children and keep a family healthy.  
24 This is particularly egregious, especially in light of the current H1N1 flu ('swine  
25 flu') epidemic in California and the rest of the nation.

26       10. During the course of this deception, Defendants have sold hundreds of  
27 thousands of units of the Krispies cereals based upon the false promises and  
28

1 misleading advertisements targeted at vulnerable and worried parents, children  
2 and/or those individuals desiring to boost their immune systems.

3 11. Plaintiff and the Class have suffered injury in fact and have lost money  
4 as a result of Defendants' false misrepresentations. Plaintiff purchased Cocoa  
5 Krispies and Rice Krispies because of the claims by Defendants that these Krispies  
6 cereals each contain twenty-five percent (25%) daily value of antioxidants and  
7 nutrients and would support her family's immune system, among other claims.  
8 Plaintiff would not have purchased the Product if she had known that this  
9 advertising was false.

10 12. Defendants' false and misleading statements should be enjoined in the  
11 face of scientific and other evidence that undercuts Defendants' claims of each of  
12 the Krispies cereals' ability to support a family's immune system. In addition,  
13 Defendants should be compelled to provide restitution to those innocent consumers  
14 that Defendants duped into purchasing Cocoa Krispies cereal.

15 16 **PARTIES**

17 13. Plaintiff is, and at all times relevant hereto was, an individual residing  
18 in Los Angeles County, California. Plaintiff is the mother of two children, and  
19 purchased both Cocoa Krispies and Rice Krispies in Los Angeles County. In doing  
20 so, Plaintiff relied upon the advertising and other promotional material which were  
21 prepared and approved by Defendants and their agents and disseminated through  
22 their packaging, label, and national advertising media, containing the  
23 misrepresentations alleged herein and designed to encourage consumers to purchase  
24 Cocoa Krispies and Rice Krispies.

25 14. Defendant Kellogg Company is a corporation organized under the laws  
26 of the State of Delaware. Kellogg Company is the world's leading producer of  
27 cereal. According to its 2007 filing with the United State Securities and Exchange  
28 Commission, Kellogg Company had nearly \$12,000,000,000 in sales in 2007.

1 Kellogg Company maintains its principal business office at One Kellogg Square,  
2 P.O. Box 3599, Battle Creek, Michigan 49016-3599. Kellogg Company, directly  
3 and through its agents, has substantial contacts with and receives benefits and  
4 income from and through the State of California. Kellogg USA Inc. and Kellogg  
5 Sales Company operate as wholly-owned subsidiaries of Kellogg Company. As  
6 such, Kellogg Company is the owner, manufacturer and distributor of the Cocoa  
7 Krispies and Rice Krispies products, and is the company that created and/or  
8 authorized the false, misleading and deceptive advertisements and/or packaging for  
9 the Cocoa Krispies and Rice Krispies.

10 15. Defendant Kellogg USA, Inc. is a corporation organized under the laws  
11 of the State of Michigan. Kellogg USA, Inc. maintains its principal business office  
12 at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan 49016-3599.  
13 Kellogg USA., Inc., directly and through its agents, has substantial contacts with  
14 and receives benefits and income from and through the State of California. Kellogg  
15 USA, Inc., is the owner, manufacturer and distributor of the Cocoa Krispies and  
16 Rice Krispies products, and/or is the company that created and/or authorized the  
17 false, misleading and deceptive advertisements and/or packaging for Cocoa Krispies  
18 and Rice Krispies.

19 16. Defendant Kellogg Sales Company is a corporation organized under the  
20 laws of the State of Delaware. Kellogg Sales Company maintains its principal  
21 business office at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan  
22 49016-3599. Kellogg Sales Company, directly and through its agents, has  
23 substantial contacts with and receives benefits and income from and through the  
24 State of California. Kellogg Sales Company, is the owner, manufacturer and  
25 distributor of the Cocoa Krispies and Rice Krispies products, and/or is the company  
26 that created and/or authorized the false, misleading and deceptive advertisements  
27 and/or packaging for the Cocoa Krispies and Rice Krispies products.

1       17. The true names and capacities, whether individual, corporate,  
2 associated or otherwise of certain manufacturers, distributors, or their alter egos  
3 sued herein as DOES 1 through 100 inclusive are presently unknown to Plaintiff  
4 who therefore sue these Defendants by fictitious names. Plaintiff will seek leave of  
5 this Court to amend the Complaint to show their true names and capacities when the  
6 same have been ascertained. Plaintiff is informed and believes and based thereon  
7 alleges that DOES 1 through 100 were authorized to do and did business in Los  
8 Angeles County. Plaintiff is further informed and believes and based thereon  
9 alleges that DOES 1 through 100 were or are, in some manner or way, responsible  
10 for and liable to Plaintiff for the events, happenings, and damages hereinafter set  
11 forth below.

12       18. Plaintiff is informed and believes and based thereon alleges that at all  
13 times relevant herein each of the Defendants was the agent, servant, employee,  
14 subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego, or other  
15 representative of each of the remaining Defendants and was acting in such capacity  
16 in doing the things herein complained of and alleged.

17       19. In committing the wrongful acts alleged herein, Defendants planned  
18 and participated in and furthered a common scheme by means of false, misleading,  
19 deceptive, and fraudulent representations to induce members of the public to  
20 purchase Cocoa Krispies and Rice Krispies. Defendants participated in the making  
21 of such representations in that each did disseminate or cause to be disseminated said  
22 misrepresentations.

23       20. Defendants, upon becoming involved with the manufacture,  
24 distribution, advertising, marketing, and sale of Cocoa Krispies and Rice Krispies  
25 knew or should have known that the claims about these Krispies cereals and, in  
26 particular, the claims suggesting that Cocoa Krispies and Rice Krispies each “NOW  
27 HELPS SUPPORT YOUR CHILD’S IMMUNITY” and includes antioxidants and  
28 nutrients that a family needs to help them stay healthy were and are false, deceptive,

1 and misleading. Indeed, since the first time that Cocoa Krispies and Rice Krispies  
2 were advertised, Defendants have been aware that they, individually and/or  
3 collectively, do not possess the requisite competent and reliable scientific evidence  
4 to substantiate their bold claims about the purported benefits and effects of each of  
5 the Krispies cereals. Defendants affirmatively misrepresented the “benefits” of  
6 each of the Krispies cereals in order to convince the public to purchase and use that  
7 product, resulting in profits of hundreds of thousands of dollars or more to  
8 Defendants, all to the damage and detriment of the consuming public. Thus, in  
9 addition to the wrongful conduct herein alleged as giving rise to primary liability,  
10 Defendants further aided and abetted and knowingly assisted each other in breach of  
11 their respective duties and obligations as herein alleged.

12

13 **FACTUAL ALLEGATIONS**

14 21. With the ever-increasing health concerns and scientific revelations  
15 regarding the nutritional content of food, the marketing of food as healthy has  
16 exploded in recent years. In an effort to “grab” some of those billions,  
17 unscrupulous companies routinely toss a small amount of a particular substance into  
18 a preexisting product and advertise said product as though it could provide results  
19 beyond what would be a reasonable expectation. Often such substances contribute  
20 no scientifically proven health benefits or contain dosages that are so small in  
21 proportion to that recommended for daily intake as to make any real benefit  
22 illusory.

23 22. These marketing companies engage in campaigns that suggest to health  
24 conscious consumers that a particular product will “SUPPORT YOUR CHILD’S  
25 IMMUNITY” and keep the consumer’s family healthy, while, in fact, what the  
26 product provides is either not what it purports to be, has not been generally accepted  
27 within the scientific community, or is otherwise far too minimal to be adequate, let  
28 alone profound.

1       23. In their marketing of Cocoa Krispies and Rice Krispies, Defendants  
2 have “followed the playbook” to the letter. Defendants’ television commercials,  
3 websites (<http://www.ricekrispies.com/products/cocoa-krispies-cereal.aspx> [for  
4 Cocoa Krispies] and <http://www.ricekrispies.com/products/rice-krispies-cereal.aspx>  
5 [for Rice Krispies], last viewed November 4, 2009) and the Krispies cereals’  
6 packaging and labeling reiterate those very same claims, and state:

7       a. FRONT LABEL OF PRODUCTS:

8           • “NOW HELPS SUPPORT YOUR CHILD’S IMMUNITY”  
9  
10           • “25% DAILY VALUE OF ANTIOXIDANTS & NUTRIENTS”  
11           • “VITAMINS A, B, C & E”

12       b. BACK LABEL OF PRODUCTS:

13           • “WITH ANTIOXIDANTS AND NUTRIENTS”  
14  
15           • “Helping to support your family’s IMMUNITY”  
16  
17           • “Kellogg’s Cocoa Krispies has been improved to include antioxidants  
18           and nutrients that your family needs to help them stay healthy.”  
19  
20           • “Excellent source of vitamins A, B, C, and E – antioxidants and  
21           nutrients that help support the body’s immune system”  
22  
23           • “Enjoy this wholesome breakfast and help keep your family healthy.”

24       c. INTERNET:

25           • And now each and every box is fortified with vitamins and nutrients  
26           that work together to help support your child’s immunity.

27       24. Defendants’ claims about Cocoa Krispies and Rice Krispies lead  
28 parents to believe that the antioxidants and nutrients contained therein will have the  
tangible result of helping to support their child’s immunity. These claims are false,  
deceptive, and misleading. Defendants do not have competent and reliable  
scientific evidence to support their claims about Cocoa Krispies and Rice Krispies.

1     Indeed, Kellogg does not cite to a single clinical trial or study it has conducted or  
2     commissioned on the benefits of Krispies cereals because, presumably, Kellogg has  
3     not conducted or commissioned any. A true and correct copy of the front and back  
4     of the Cocoa Krispies packaging is attached hereto as **Exhibit “1”** and **Exhibit “2”**,  
5     respectively. A true and correct copy of the front and back of the Rice Krispies  
6     packaging is attached hereto as **Exhibit “3”** and **Exhibit “4”**, respectively.

7       25. In spite of its lack of competent and reliable scientific evidence to  
8     support its claims about Cocoa Krispies and Rice Krispies, Kellogg has introduced  
9     products including but not limited to Krispies cereals into the marketplace to profit  
10    from a growing trend in the manufacturing, advertising, and sales of “functional”  
11    foods. Kellogg has prioritized profits ahead of its customers by altogether failing to  
12    conduct or commission any clinical trials or studies whatsoever concerning the  
13    benefits and risks of Krispies cereals.

14       26. Contrary to its consistent and uniform claims, Defendants fail to  
15    adequately disclose that other ingredients, including but not limited to sugar,  
16    chocolate, high-fructose corn syrup and/or partially-hydrogenated oils, may not  
17    “help support” a child’s immunity. Defendants also fail to adequately disclose  
18    whether inclusion of such ingredients may outweigh the benefits, and thus render  
19    the “immunity” claims false and/or misleading.

20       27. Defendants further failed and continue to fail to adequately disclose  
21    whether the form and/or amount of the “antioxidants and nutrients” purportedly  
22    added to the box may not render the health benefits Defendants claim.

23       28. Defendants’ claims about Cocoa Krispies and Rice Krispies lead  
24    parents and those seeking to boost their immune systems, to believe that the  
25    “dosage” of antioxidants and nutrients contained therein will have the tangible  
26    result of helping to support their child’s immunity. These claims are false,  
27    deceptive, and misleading. Defendants do not have competent and reliable  
28    scientific evidence to support such claims.

1       29. During the course of their false, misleading, and deceptive advertising  
2 campaign, Defendants have sold hundreds of thousands of units or more of Cocoa  
3 Krispies and Rice Krispies based upon Defendants' false promises. Plaintiff and the  
4 Class have suffered injury in fact and have lost money as a result of Defendants'  
5 false representations. The Products, as purchased by the Plaintiff and the Class,  
6 were and are unsatisfactory and worth less than the amount paid for.

7       30. Plaintiff would not have purchased the Products, but for Defendants'  
8 representations that consuming the Products would boost her and her family's  
9 immunity.

10      31. Through the conduct described herein, Defendants have received  
11 money belonging to Plaintiffs and the Class through the sale of the Products.

12      32. Defendants have reaped substantial profit by misrepresenting the facts  
13 regarding their Products, as set forth herein. Defendants have benefited from the  
14 receipt of such money that they would not have received but for their  
15 misrepresentations and/or omissions.

16      33. As a direct and proximate result of Defendants' misconduct as set forth  
17 herein, Defendants have been unjustly enriched.

18      34. Under principles of equity and good conscience, Defendants should not  
19 be permitted to keep the money belonging to Plaintiffs and the Class that  
20 Defendants have unjustly received as a result of their actions.

21      //

22      //

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26      //

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## **CLASS ACTION ALLEGATIONS**

35. Plaintiff brings this action on behalf of herself and the proposed plaintiff Class members under Federal Rule of Civil Procedure Rule 23(b)(2) and (b)(3). The proposed Cocoa Krispies Class consists of:

All persons residing in the State of California who purchased Cocoa Krispies for personal use and not for resale during the time period November 4, 2005 through the present. Excluded from the Class are Kellogg's officers, directors, and employees, and any individual who received remuneration from Kellogg in connection with that individual's use or endorsement of Cocoa Krispies Immunity.

36. The proposed Rice Krispies Class consists of:

All persons residing in the State of California who purchased Rice Krispies for personal use and not for resale during the time period November 4, 2005 through the present. Excluded from the Class are Kellogg's officers, directors, and employees, and any individual who received remuneration from Kellogg in connection with that individual's use or endorsement of Rice Krispies Immunity.

Said definitions of the Cocoa Krispies Class and/or Rice Krispies Class may be further defined or amended by additional pleadings, evidentiary hearings, a class certification hearing, and orders of this Court. The Cocoa Krispies Class and Rice Krispies Class shall both be collectively referred to as “the Class” for purposes of this Complaint.

37. The Class comprises many thousands of persons throughout California, the joinder of whom is impracticable, and the disposition of their claims in a class action will benefit the parties and the Court. The Class is sufficiently numerous because millions of units of Cocoa Krispies and Rice Krispies have been sold in the

1 State of California during the Class Period.

2 38. There is a well-defined community of interest in the questions of law  
3 and fact involved affecting the parties to be represented. The questions of law and  
4 fact common to the Class predominate over questions which may affect individual  
5 Class members. Common questions of law and fact include, but are not limited to,  
6 the following:

- 7 a. Whether Defendants' conduct is an unlawful business act or practice  
8 within the meaning of CAL. BUS. & PROF. CODE § 17200, *et seq.*;
- 9 b. Whether Defendants' conduct is a fraudulent business act or practice  
10 within the meaning of CAL. BUS. & PROF. CODE § 17200, *et seq.*;
- 11 c. Whether Defendants' advertising is untrue or misleading within the  
12 meaning of CAL. BUS. & PROF. CODE § 17500, *et seq.*;
- 13 d. Whether Defendants possess competent and reliable scientific evidence  
14 to support their label and advertising claims made regarding the  
15 Products;
- 16 e. Whether Defendants made false and misleading representations in their  
17 advertising and labeling of the Products;
- 18 f. Whether Defendants failed to disclose that the Products may not  
19 actually boost consumers' immunity;
- 20 g. Whether Defendants knew or should have known that the  
21 representations and omissions were false;
- 22 h. Whether Defendants' misrepresentations and omissions were likely to  
23 deceive a reasonable consumer;
- 24 i. Whether Defendants represented that the Products were of a particular  
25 standard, quality, or grade when they are of another; and
- 26 j. Whether Defendants represented that the Products have characteristics,  
27 benefits, uses, or quantities which it does not have.

1       39. Plaintiff's claims are typical of the claims of the Class, and Plaintiff  
2 will fairly and adequately represent and protect the interests of the Class. Plaintiff  
3 does not have any interests which are antagonistic to those of the proposed Class.  
4 Plaintiff has retained competent and experienced counsel in class action and other  
5 complex litigation. The questions of law and fact common to the Class members,  
6 some of which are set out above, predominate over any questions affecting only  
7 individual Class members.

8       40. Plaintiff and the Class have suffered injury in fact and have lost money  
9 as a result of Defendants' false, deceptive, and misleading representations.

10      41. The Product as purchased by the Plaintiff and the Class was and is  
11 unsatisfactory and worth less than the amount paid for.

12      42. The Class is identifiable and readily ascertainable. The names and  
13 addresses of the class members are available through business or public records.  
14 Notice can be provided to such purchasers via first class mail using techniques and  
15 a form of notice similar to those customarily used in class actions, and by internet  
16 publication, radio, newspapers, and magazines.

17      43. A class action is superior to other available methods for fair and  
18 efficient adjudication of this controversy. The expense and burden of individual  
19 litigation would make it impracticable or impossible for proposed members of the  
20 Class to prosecute their claims individually.

21      44. The trial and the litigation of Plaintiff's claims are manageable.  
22 Individual litigation of the legal and factual issues raised by Defendants' conduct  
23 would increase delay and expense to all parties and the court system. The class  
24 action device presents far fewer management difficulties and provides the benefits  
25 of a single, uniform adjudication, economies of scale, and comprehensive  
26 supervision by a single court.

27      45. Defendants have acted on grounds generally applicable to the entire  
28 Class, thereby making final injunctive relief or corresponding declaratory relief

1 appropriate with respect to the Class as a whole. The prosecution of separate  
2 actions by individual Class members would create the risk of inconsistent or  
3 varying adjudications with respect to individual member of the Class that would  
4 establish incompatible standards of conduct for Defendants.

5 46. Absent a class action, Defendants will likely retain the benefits of their  
6 wrongdoing. Because of the small size of the individual Class members' claims,  
7 few, if any, Class members could afford to seek legal redress for the wrongs  
8 complained of herein. Absent a representative action, the Class members will  
9 continue to suffer losses and Defendants will be allowed to continue these  
10 violations of law and to retain the proceeds of their ill-gotten gains.

11  
12 **FIRST CAUSE OF ACTION**

13 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS**  
14 **AND PROFESSIONS CODE § 17200, *et seq.***

15 **(By Plaintiff and each Class Against All Defendants)**

16 47. Plaintiff repeats and re-alleges the allegations set forth in the preceding  
17 paragraphs and incorporates the same as if set forth herein at length.

18 48. This cause of action is brought pursuant to CAL. BUS. & PROF. CODE §  
19 17200, *et seq.*, on behalf of Plaintiff and a Class consisting of all persons residing in  
20 the State of California who purchased Cocoa Krispies and/or Rice Krispies for  
21 personal use and not for resale.

22 49. Defendants, in their advertising and packaging of Cocoa Krispies  
23 and/or Rice Krispies, made and continue to make false and misleading statements  
24 regarding the benefits and the efficacy of Cocoa Krispies and/or Rice Krispies,  
25 particularly as they apply to supporting a child's immunity and helping to keep  
26 family members healthy, all as set forth in the examples above.

27 //

28 //

1       50. Defendants do not have any competent or reliable scientific evidence to  
2 support the claims about Cocoa Krispies and/or Rice Krispies made in Defendants'  
3 advertising and on Defendants' packaging and labels.

4       51. Defendants are aware that the claims that they make about Cocoa  
5 Krispies and/or Rice Krispies are false, misleading, and unsubstantiated.

6       52. As alleged in the preceding paragraphs, the misrepresentations by  
7 Defendants of the material facts detailed above constitute an unfair, unlawful, and  
8 fraudulent business practice within the meaning of CAL. BUS. & PROF. CODE §  
9 17200.

10       53. In addition, Defendants' use of various forms of advertising media to  
11 advertise, call attention to, or give publicity to the sale of goods or merchandise  
12 which are not as represented in any manner constitutes unfair competition, unfair,  
13 deceptive, untrue, or misleading advertising, and an unlawful business practice  
14 within the meaning of CAL. BUS. & PROF. CODE §§ 17531 and 17200, which  
15 advertisements have deceived and are likely to deceive the consuming public, in  
16 violation of CAL. BUS. & PROF. CODE §§ 17200 and 17500.

17       54. There were reasonably available alternatives to further Defendants'  
18 legitimate business interests, other than the conduct described herein.

19       55. All of the conduct alleged herein occurs and continues to occur in  
20 Defendants' business. Defendants' wrongful conduct is part of a pattern or  
21 generalized course of conduct repeated on thousands of occasions daily.

22       56. Pursuant to CAL. BUS. & PROF. CODE §§ 17203 and 17535, Plaintiff and  
23 the members of the Class seek an order of this Court enjoining Defendants from  
24 continuing to engage, use, or employ their practice of advertising the sale and use of  
25 Cocoa Krispies and/or Rice Krispies. Likewise, Plaintiff and the members of the  
26 Class seek an order requiring Defendants to disclose such misrepresentations, and  
27 additionally request an order awarding Plaintiff and the Class restitution of the  
28 money wrongfully acquired by Defendants by means of responsibility attached to

1 Defendants' failure to disclose the existence and significance of said  
2 misrepresentations.

3 57. Plaintiff and the Class have suffered injury in fact and have lost money  
4 or property as a result of Defendants' false representations. The Products as  
5 purchased by the Plaintiff and the Class were and are unsatisfactory and worth less  
6 than the amount paid for.

7

8 **SECOND CAUSE OF ACTION**

9 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS**  
10 **AND PROFESSIONS CODE § 17500, *et seq.***

11 (By Plaintiff and each Class Against All Defendants)

12 58. Plaintiff repeats and re-alleges the allegations set forth in the preceding  
13 paragraphs and incorporates the same as if set forth herein at length.

14 59. This cause of action is brought pursuant to CAL. BUS. & PROF. CODE §  
15 17500, *et seq.*, on behalf of Plaintiff and the Class consisting of all persons residing  
16 in the State of California who purchased Cocoa Krispies and/or Rice Krispies for  
17 personal use and not for resale.

18 60. In its advertising of Cocoa Krispies and/or Rice Krispies, Defendants  
19 knowingly make false and misleading statements regarding the benefits and the  
20 effects of Cocoa Krispies and Rice Krispies, particularly as they apply to supporting  
21 a child's immunity and helping to keep family members healthy, all as set forth in  
22 the examples above.

23 61. Defendants do not have any competent and reliable scientific evidence  
24 to support the claims about Cocoa Krispies and/or Rice Krispies made in  
25 Defendants' advertising and on the packaging and labels of the Products.

26 62. Defendants are aware and knew that the claims that they make about  
27 Cocoa Krispies and Rice Krispies are false, misleading, and unsubstantiated.

1       63. As alleged in the preceding paragraphs, the misrepresentations by  
2 Defendants of the material facts detailed above constitutes an unfair, unlawful, and  
3 fraudulent business practice within the meaning of CAL. BUS. & PROF. CODE §  
4 17200.

5       64. In addition, Defendants' use of various forms of advertising media to  
6 advertise, call attention to or give publicity to the sale of goods or merchandise  
7 which are not as represented in any manner constitutes unfair competition, unfair,  
8 deceptive, untrue, or misleading advertising, and an unlawful business practice  
9 within the meaning of CAL. BUS. & PROF. CODE §§ 17531 and 17200, which  
10 advertisements have deceived and are likely to deceive the consuming public, in  
11 violation of CAL. BUS. & PROF. CODE § 17500.

12       65. Pursuant to CAL. BUS. & PROF. CODE §§ 17203 and 17535, Plaintiff and  
13 the members of the Class seek an order of this Court enjoining Defendants from  
14 continuing to engage, use, or employ their practice of advertising the sale and use of  
15 Cocoa Krispies and/or Rice Krispies. Likewise, Plaintiff and the members of the  
16 Class seek an order requiring Defendants to disclose such misrepresentations, and  
17 additionally request an order awarding Plaintiff and the Class restitution of the  
18 money wrongfully acquired by Defendants by means of responsibility attached to  
19 Defendants' failure to disclose the existence and significance of said  
20 misrepresentations.

21       66. Plaintiff and the Class have suffered injury in fact and have lost money  
22 or property as a result of Defendants' false representations. The Product as  
23 purchased by the Plaintiff and the Class was and is unsatisfactory and worth less  
24 than the amount paid for.

25       //

26       //

27       //

28       //

### **THIRD CAUSE OF ACTION**

**VIOLATION OF CALIFORNIA CIVIL CODE § 1750, *et seq.***

**(By Plaintiff and each Class against all Defendants)**

67. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs and incorporates the same as if set forth herein at length.

68. This cause of action is brought pursuant to CAL. CIV. CODE § 1750, *et seq.*, the CLRA, on behalf of Plaintiff and a Class consisting of all persons residing in the State of California who purchased Cocoa Krispies and/or Rice Krispies for personal use and not for resale.

69. The Class consists of thousands of persons, the joinder of whom is impracticable.

70. There are questions of law and fact common to the class. These questions are substantially similar and predominate over questions affecting the individual members, including but not limited to: (a) Whether Defendants represented that Cocoa Krispies and/or Rice Krispies have characteristics, benefits, uses, or quantities which they do not have; (b) Whether the existence, extent, and significance of the major misrepresentations and/or omissions regarding the purported benefits, characteristics, and efficacy of Cocoa Krispies and/or Rice Krispies violate the Act; and (c) Whether Defendants knew of the existence of these misrepresentations and omissions.

71. The policies, acts, and practices heretofore described were intended to result in the sale of Cocoa Krispies and Rice Krispies to the consuming public, particularly those concerned about boosting their immunity and that of their children, and violated and continue to violate CAL. CIV. CODE § 1770(a)(5) by representing that Cocoa Krispies and Rice Krispies has characteristics, benefits, uses, or quantities which it does not have.

72. The policies, acts, and practices heretofore described were intended to result in the sale of Cocoa Krispies and Rice Krispies to the consuming public,

1 particularly those concerned about boosting their immunity and that of their  
2 children, and violated and continue to violate CAL. CIV. CODE § 1770(a)(7) by  
3 representing that Cocoa Krispies and Rice Krispies is of a particular standard,  
4 quality, or grade, or that Cocoa Krispies and Rice Krispies is of a particular style or  
5 model, when they are of another.

6 73. Defendants fraudulently deceived Plaintiff and the Class by  
7 representing that Cocoa Krispies and Rice Krispies have certain characteristics,  
8 benefits, uses, and qualities which they do not have. In doing so, Defendants  
9 intentionally misrepresented and concealed material facts from Plaintiff and the  
10 Class, specifically, that Cocoa Krispies and Rice Krispies each helps to support a  
11 person's immunity and keep them healthy. Said misrepresentation and concealment  
12 were done with the intention of deceiving Plaintiff and the Class and depriving them  
13 of their legal rights and money.

14 74. Defendants knew that the dosage and form of antioxidants and nutrients  
15 in Cocoa Krispies and Rice Krispies are not scientifically proven to substantially  
16 help to support the body's immune system.

17 75. Defendants' actions as described herein above were done with  
18 conscious disregard of Plaintiff's rights and Defendants were wanton and malicious  
19 in their concealment of same.

20 76. Plaintiff and the Class have suffered injury in fact and have lost or  
21 property as a result of Defendants' false representations.

22 77. The Product as purchased by the Plaintiff and the Class was and is  
23 unsatisfactory and worth less than the amount paid for.

24 78. Pursuant to CAL. CIV. CODE § 1780(a), Plaintiff seeks injunctive relief  
25 to enjoin the above-described wrongful acts and practices of Defendants, including,  
26 but not limited to, an order:

27 A. Enjoining Defendants from continuing to make the statements set  
28 forth above;

- B. Enjoining Defendants from continuing to offer for sale any unit of Cocoa Krispies and Rice Krispies that contains any false, misleading and/or unsubstantiated statements and claims on their packaging and/or their labels, including, without limitation, those statements and claims set forth above;
- C. Ordering that Defendants immediately recall any and all units of Cocoa Krispies and/or Rice Krispies that contain any false, misleading and/or unsubstantiated statements and claims on them and/or their labels, including, without limitation, those statements and claims set forth above;
- D. Enjoining Defendants from continuing to use the packaging and label that they presently use for Cocoa Krispies and Rice Krispies; and
- E. Enjoining Defendants from distributing such false advertising and misrepresentations.

79. In accordance with Section 1782 of the CLRA, on or about November 4, 2009 Plaintiff notified Defendants in writing of the particular violations of Section 1770 of the CLRA (the Notices) and demanded, among other things, that Defendants cease making the misrepresentations and omissions alleged herein, and that Defendants provide restitution to consumers who purchased the Products. Plaintiff sent the Notices by means of certified mail, return-receipt requested, to Defendants at their principal places of business as well as Defendants' agents for service of process, as listed by the California Secretary of State. Since Defendants failed to respond to Plaintiff's demands within thirty days of receipt of the Notice, pursuant to section 1782(a) and (d) of the CLRA, Plaintiff hereby amends the Complaint to request statutory damages, actual damages, plus punitive damages, interest and attorney's fees. Plaintiff requests that this Court enter such orders or judgments as may be necessary to restore any person in interest any money which

1 may have been acquired by means of such unfair business practices, and for such  
2 relief as provided in CAL. CIV. CODE § 1780 and the Prayer for Relief.

3 80. Plaintiff requests that this Court enter such orders or judgments as may  
4 be necessary to restore any person in interest any money which may have been  
5 acquired by means of such unfair business practices, and for such relief as provided  
6 in CAL. CIV. CODE § 1780(a) and the Prayer for Relief.

7 81. Plaintiffs shall be irreparably harmed if such an order is not granted.

8  
9  
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
12 situated, prays for judgment and relief as to the FIRST and SECOND CAUSES OF  
13 ACTION as follows:

14 A. An order certifying that the action may be maintained as a Class  
15 Action;  
16 B. An order enjoining Defendants from pursuing the policies, acts,  
17 and practices complained of herein;  
18 C. An order requiring Defendants to pay restitution to Plaintiff and  
19 all members of the Class;  
20 D. For pre-judgment interest from the date of filing this suit;  
21 E. Reasonable attorneys' fees;  
22 F. Costs of this suit; and  
23 G. Such other and further relief as the Court may deem necessary or  
24 appropriate.

25 //

26 //

27 //

28 //

1 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
2 situated, prays for judgment and relief as to the THIRD CAUSE OF ACTION as  
3 follows:

4           A. An order certifying that the action may be maintained as a Class  
5           Action;

6           B. An order enjoining Defendants from pursuing the policies, acts,  
7           and practices complained of herein;

8           C. An order requiring Defendants to pay restitution to Plaintiff and  
9           all members of the Class;

10           D. For an award of actual damages;

11           E. For an award of punitive damages;

12           F. For pre-judgment interest from the date of filing this suit;

13           G. Reasonable attorneys' fees and costs of this suit;

14           H. Such other and further relief as the Court may deem necessary or  
15           appropriate.

16           I. That each senior citizen and disabled person who is a plaintiff be  
17           awarded \$5,000 as authorized by sections 1780(b) and 3345(b) of  
18           the Civil Code; and,

19  
20 DATED: December 8, 2009

**MILSTEIN, ADELMAN & KREGER,  
LLP**

/s/ Wayne S. Kreger

Wayne S. Kreger (154759)  
Sara D. Avila (263213)  
Attorney for Plaintiff

21  
22  
23  
24  
25 DATED: December 8, 2009

**LAW OFFICES OF HOWARD WEIL  
RUBINSTEIN**

/s/ Howard W. Rubinstein

Howard W. Rubinstein (*pro hac vice*)  
23

1 Attorney for Plaintiff

2 DATED: December 8, 2009

**WHATLEY, DRAKE & KALLAS**

3 /s/ Joe Whatley, Jr.

4 Joe Whatley, Jr. (*pro hac vice*)  
5 Attorney for Plaintiff

6 **JURY TRIAL DEMANDED**

7 Plaintiff demands a jury trial on all triable issues.

8 DATED: December 8, 2009

9 MILSTEIN, ADELMAN & KREGER, LLP

10 By:

11 /s/ Wayne S. Kreger  
12 Wayne S. Kreger (154759)  
13 Sara D. Avila (263213)

14 Attorneys for Plaintiff

15 DATED: December 8, 2009

16 LAW OFFICE OF HOWARD WEIL  
17 RUBINSTEIN

18 By:

19 /s/ Howard W. Rubinstein  
20 Howard W. Rubinstein (*pro hac*)  
21 Attorney for Plaintiff

22 DATED: December 8, 2009

23 WHATLEY, DRAKE KALLAS, LLP

24 By:

25 /s/ Joe Whatley, Jr.  
26 Joe Whatley, Jr. (*pro hac vice*)  
27 Attorney for Plaintiff

# **Exhibit “1”**



# **Exhibit “2”**

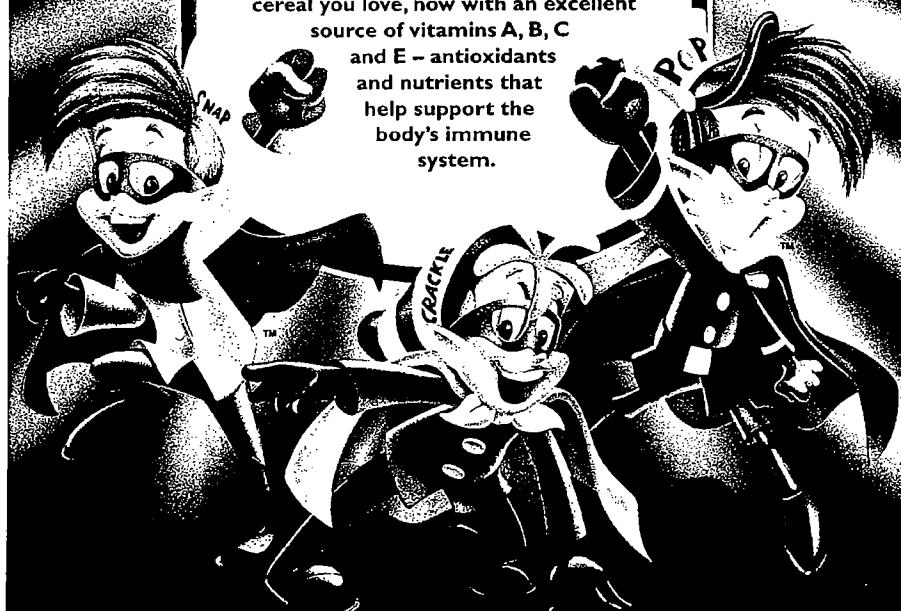
# Kellogg's® COCOA KRISPIES®

WITH ANTIOXIDANTS AND NUTRIENTS

## Helping to support your family's **IMMUNITY**

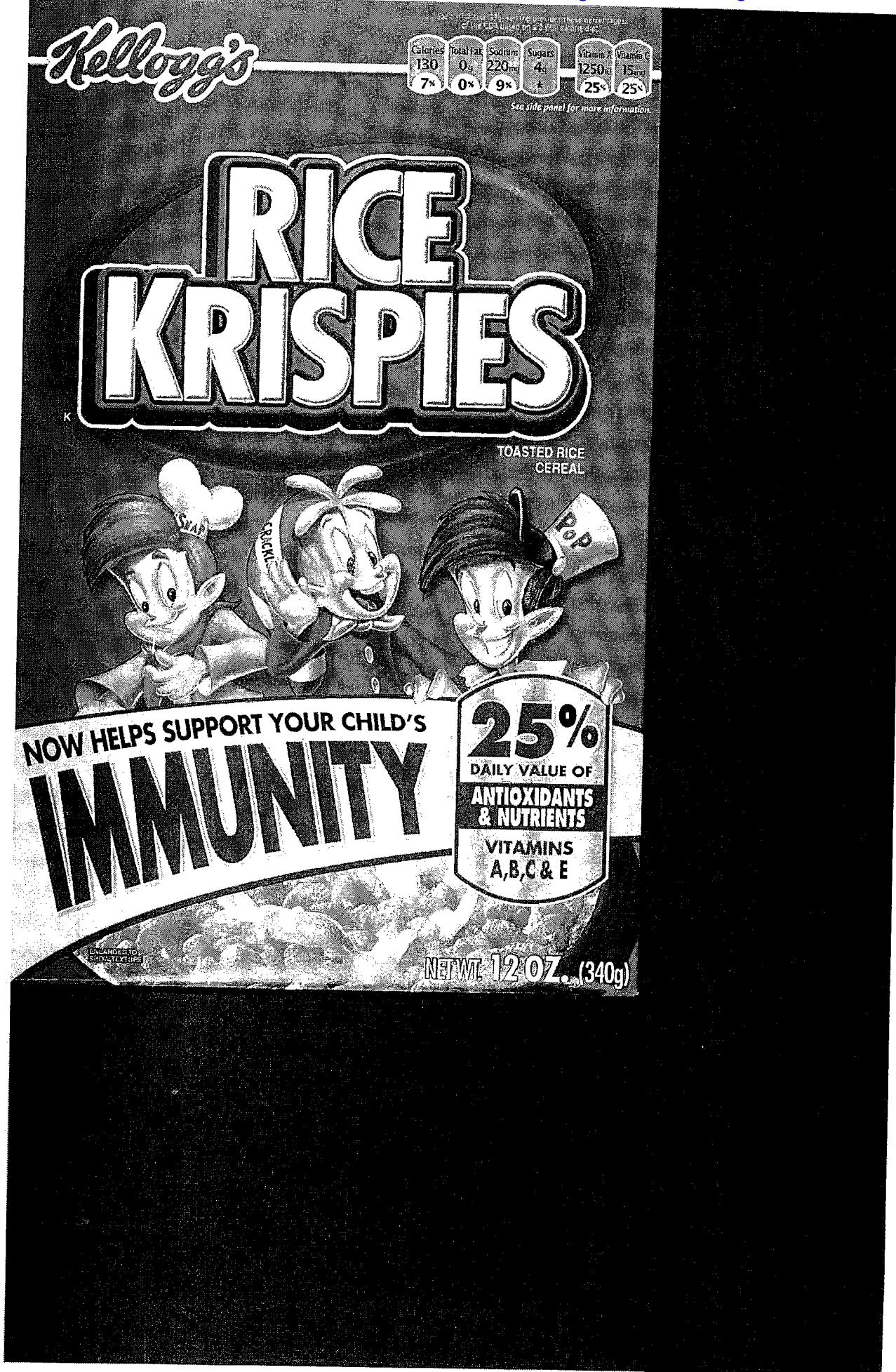
*Kellogg's® Cocoa Krispies® has been improved to include antioxidants and nutrients that your family needs to help them stay healthy.*

*Cocoa Krispies® is still the same delicious cereal you love, now with an excellent source of vitamins A, B, C and E – antioxidants and nutrients that help support the body's immune system.*



Enjoy this wholesome breakfast and help keep your family healthy.

# **Exhibit “3”**



# **Exhibit “4”**

*Kellogg's* RICE KRISPIES

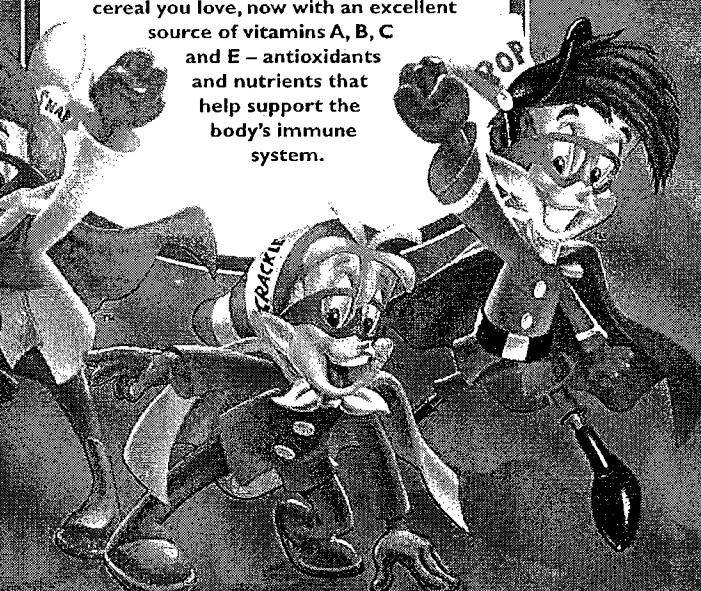
WITH ANTIOXIDANTS AND NUTRIENTS

Helping to  
support your family's  
**IMMUNITY**

*Kellogg's* Rice Krispies® has been  
improved to include antioxidants and  
nutrients that your family needs to  
help them stay healthy.

Rice Krispies® is still the same delicious  
cereal you love, now with an excellent  
source of vitamins A, B, C  
and E – antioxidants  
and nutrients that  
help support the  
body's immune  
system.

Enjoy this wholesome breakfast and help keep your family healthy.



1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3  
4 I am employed in the County of LOS ANGELES, State of CALIFORNIA. I am over the age  
5 of 18 and not a party to within action; my business address is **2800 Donald Douglas Loop North,**  
**Santa Monica, CA 90405.**

6 On December 9, 2009, I served the foregoing documents described as:

7 **FIRST AMENDED CLASS ACTION COMPLAINT**

8 **SUMMONS TO FIRST AMENDED COMPLAINT**

9 **DECLARATION OF SARA D. AVILA RE: VENUE PURSUANT TO CAL. CIV. CODE**  
10 **§1780(d)**

11 On interested parties in this action by sending a true copy of the document to the following parties  
as follows:

12  
13 Kenneth K. Lee, Esq.  
14 **JENNER & BLOCK LLP**  
15 633 West 5th Street, Suite 3500  
16 Los Angeles, CA 90071-2054

17  
18 *Counsel for Defendants:*  
19 *Kellogg Company, Kellogg USA, Inc., Kellogg Sales Company*

20  
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28

- (BY ELECTRONIC MAIL) I caused the document(s) to be successfully transmitted via electronic mail to the offices of the addressees.
- (BY ELECTRONIC SERVICE) I caused the document(s) to be sent to the offices of the addressees via Online Filing Service.
- (BY FACSIMILE) I transmitted pursuant Rule 2.306, the above-described document by facsimile machine (which complied with Rule 2003(3)), to the attached listed fax number(s). The transmission originated from facsimile phone number (310) 396-9635 and was reported as complete and without error.
- (BY OVER NIGHT DELIVERY) I caused such envelope(s) thereon fully prepaid to be placed in the *Overnite Express* box at Santa Monica, California.
- (BY PERSONAL SERVICE) I caused such envelope(s) to be hand delivered to the offices of the addressees.

1        xxxx (BY US MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in  
2        the United States mail at Santa Monica, California. I am readily familiar with this business'  
3        practice for collecting and processing correspondence for mailing. On the same day that  
4        correspondence is placed for collection and mailing, it is deposited in the ordinary course of  
5        business with the United States Postal Service.

6        Executed on December 9, 2009 at Santa Monica, California

7        ----- (STATE) I declare under penalty of perjury under the laws of the State of California that the  
8        above is true and correct.

9        xxxx (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at  
10       whose direction the service was made.



Drew Aresca

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